

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IVAN SANCHEZ ARIAS, a minor by
and through his Guardian Ad Litem
YOLANDA ARIAS,

Plaintiff,

v.

WILLIAM HARM, California Highway
Patrol Officer,

Defendant.

No. C 09-00760 CW

PRELIMINARY JURY
INSTRUCTIONS

DUTY OF THE JURY

Ladies and gentlemen: You are now the jury in this case.
It is my duty to instruct you on the law.

These instructions are preliminary instructions to help
you understand the principles that apply to civil trials and
to help you understand the evidence as you listen to it. You
will be allowed to keep this set throughout the trial to
which to refer. This set of instructions is not to be taken
home and must remain in the jury room when you leave in the
evenings. At the end of the trial, I will give you a final
set of instructions. It is the final set of instructions
that will govern your deliberations.

You must not infer from these instructions or from
anything I may say or do as indicating that I have an opinion

1 regarding the evidence or what your verdict should be. It is
2 your duty to find the facts from all the evidence in the
3 case. To those facts you will apply the law as I give it to
4 you. You must follow the law as I give it to you whether you
5 agree with it or not. And you must not be influence by any
6 personal likes or dislikes, opinions, prejudices, or
7 sympathy. That means that you must decide the case solely on
8 the evidence before you. You will recall that you took an
9 oath to do so.

10 In following my instructions, you must follow all of
11 them and not single out some or ignore others; they are all
12 important.

13 **CLAIMS AND DEFENSES**

14 To help you follow the evidence, I will give you a brief
15 summary of the positions of the parties:

16 In this lawsuit Plaintiff claims that Defendant violated
17 his constitutional rights, under the First and Fourth
18 Amendments, in the following ways: (1) Plaintiff was
19 unreasonably detained by Defendant, (2) Defendant searched
20 Plaintiff's home without reasonable cause, (3) Defendant
21 falsely arrested Plaintiff; (4) Defendant used excessive
22 force against Plaintiff; and (5) Defendant arrested Plaintiff
23 in retaliation for exercises his First Amendment rights to
24 free speech and expression. Plaintiff has the burden of
25 proving these claims. Defendant denies those claims.

26 **BURDEN OF PROOF-PREPONDERANCE OF THE EVIDENCE**

27 When a party has the burden of proof on any claim by a
28 preponderance of the evidence, it means you must be persuaded

1 by the evidence that the claim is more probably true than not
2 true.

3 You should base your decision on all of the evidence,
4 regardless of which party presented it.

5 **WHAT IS EVIDENCE**

6 The evidence you are to consider in deciding what the
7 facts are, consists of:

8 (1) the sworn testimony of any witness;

9 (2) the exhibits which have been received into evidence;
10 and

11 (3) any facts to which the lawyers may agree.

12 **WHAT IS NOT EVIDENCE**

13 In reaching your verdict, you may consider only the
14 testimony and exhibits received into evidence. Certain
15 things are not evidence, and you may not consider them in
16 deciding what the facts are. I will list them for you:

17 (1) Arguments and statements by lawyers are not
18 evidence. The lawyers are not witnesses. What they will say
19 in their opening statements, closing arguments, and at other
20 times is intended to help you interpret the evidence, but it
21 is not evidence. If the facts as you remember them differ
22 from the way the lawyers state them, your memory of them
23 controls.

24 (2) Questions and objections by lawyers are not
25 evidence. Attorneys have a duty to their clients to object
26 when they believe a question is improper under the rules of
27 evidence. You should not be influenced by the objection or
28 by the Court's ruling on it.

1 (3) Testimony that is excluded or stricken, or that you
2 are instructed to disregard, is not evidence and must not be
3 considered. In addition sometimes testimony and exhibits are
4 received only for a limited purpose; when I give a limiting
5 instruction, you must follow it.

6 (4) Anything you see or hear when the Court is not in
7 session is not evidence. You are to decide the case solely
8 on the evidence received at the trial.

9 **CHARTS AND SUMMARIES NOT RECEIVED IN EVIDENCE**

10 Certain charts and summaries not received in evidence
11 may be shown to you in order to help explain the contents of
12 books, records, documents, or other evidence in the case.
13 They are not themselves evidence or proof of any facts. If
14 they do not correctly reflect the facts or figures shown by
15 the evidence in the case, you should disregard these charts
16 and summaries and determine the facts from the underlying
17 evidence.

18 **EVIDENCE FOR LIMITED PURPOSE**

19 Some evidence may be admitted for a limited purpose
20 only. If I instruct you that an item of evidence is admitted
21 for a limited purpose, you must consider it only for that
22 limited purpose and for no other.

23 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

24 Evidence may be direct or circumstantial. Direct
25 evidence is direct proof of a fact, such as testimony by a
26 witness about what that witness personally saw or heard or
27 did. Circumstantial evidence is proof of one or more facts
28 from which you could find another fact. You should consider

1 both kinds of evidence. The law makes no distinction between
2 the weight to be given to either direct or circumstantial
3 evidence. It is for you to decide how much weight to give to
4 any evidence.

5 **RULING ON OBJECTIONS**

6 There are rules of evidence that control what can be
7 received into evidence. When a lawyer asks a question or
8 offers an exhibit into evidence and a lawyer on the other
9 side thinks that it is not permitted by the rules of
10 evidence, that lawyer may object. If I overrule the
11 objection, the question may be answered or the exhibit
12 received. If I sustain the objection, the question cannot be
13 answered, and the exhibit cannot be received. Whenever I
14 sustain an objection to a question, you must ignore the
15 question and must not guess what the answer might have been.

16 Sometimes I may order that evidence be stricken from the
17 record and that you disregard or ignore the evidence. That
18 means that when you are deciding the case, you must not
19 consider the evidence that I told you to disregard.

20 **CREDIBILITY OF WITNESSES**

21 In deciding the facts in this case, you may have to
22 decide which testimony to believe and which testimony not to
23 believe. You may believe everything a witness says, or part
24 of it, or none of it.

25 In considering the testimony of any witness, you may
26 take into account:

27 (1) the opportunity and ability of the witness to see
28 or hear or know the things testified to;

- 1 (2) the witness's memory;
- 2 (3) the witness's manner while testifying;
- 3 (4) the witness's interest in the outcome of the case
- 4 and any bias or prejudice;
- 5 (5) whether other evidence contradicts the witness's
- 6 testimony;
- 7 (6) the reasonableness of the witness's testimony in
- 8 light of all the evidence; and
- 9 (7) any other factors that bear on believability.

10 The weight of the evidence as to a fact does not

11 necessarily depend on the number of witnesses who testify

12 about it.

13 **EXPERT OPINION**

14 Some witnesses, because of education or experience, are

15 permitted to state opinions and the reasons for their

16 opinions.

17 Opinion testimony should be judged just like any other

18 testimony. You may accept it or reject it, and give it as

19 much weight as you think it deserves, considering the

20 witnesses' education and experience, the reasons given for the

21 opinion and all the other evidence in the case.

22 **NO TRANSCRIPT AVAILABLE TO JURY**

23 During deliberations, you will have to make your

24 decision based on what you recall of the evidence. You will

25 not have a transcript of the trial. I urge you to pay close

26 attention to the testimony as it is given.

27

28

1 If at any time you cannot hear or see the testimony,
2 evidence, questions or arguments, let me know so that I can
3 correct the problem.

4 **TAKING NOTES**

5 If you wish, you may take notes to help you remember the
6 evidence. If you do take notes, please keep them to yourself
7 until you and your fellow jurors go to the jury room to
8 decide the case. Do not let note-taking distract you. When
9 you leave, your notes should be left in the jury room. No
10 one will read your notes. They will be destroyed at the
11 conclusion of the case.

12 Whether or not you take notes, you should rely on your
13 own memory of the evidence. Notes are only to assist your
14 memory. You should not be overly influenced by your notes or
15 those of your fellow jurors.

16 **JURY TO BE GUIDED BY OFFICIAL ENGLISH**

17 **TRANSLATION/INTERPRETATION**

18 Languages other than English may be used during this
19 trial. The evidence to be considered by you is only that
20 provided through the official court interpreters and
21 translators. Although you may know Spanish, it is important
22 that all jurors consider the same evidence. Therefore, you
23 must accept the English interpretation and translation. You
24 must disregard any different meaning.

25 **OUTLINE OF TRIAL**

26 Trials proceed in the following way: First, each side
27 may make an opening statement. An opening statement is not
28 evidence. It is simply an outline to help you understand

1 what that party expects the evidence will show. A party is
2 not required to make an opening statement.

3 Plaintiff will then present evidence, and counsel for
4 Defendant may cross examine. Then Defendant may present
5 evidence, and counsel for Plaintiff may cross examine.

6 After the evidence has been presented, I will instruct
7 you on the law that applies to the case and the attorneys
8 will make closing arguments.

9 After that, you will go to the jury room to deliberate
10 on your verdict.

11 **CIVIL RIGHTS CLAIM - INTRODUCTORY INSTRUCTION**

12 Plaintiff brings his claims under the federal civil
13 rights statute, which provides that any person or persons
14 who, under color of law, deprives another of any rights,
15 privileges, or immunities secured by the Constitution or laws
16 of the United States shall be liable to the injured party.

17 **CIVIL RIGHTS CLAIM - ELEMENTS AND BURDEN OF PROOF**

18 The parties agree that Defendant acted under color of
19 state law. Therefore, in order to prevail on his civil
20 rights claim against Defendant, Plaintiff must prove by a
21 preponderance of the evidence that Defendant's acts deprived
22 him of his rights under the United States Constitution as
23 explained in later instructions.

24 In this case, Plaintiff has alleged five ways that
25 Defendant violated his constitutional rights. If you find
26 Plaintiff has proved the elements he is required to prove
27 under the instructions regarding (1) unreasonable detention
28 under the Fourth Amendment, (2) unreasonable search under the

1 Fourth Amendment, (3) probable cause to arrest under the
2 Fourth Amendment, (4) excessive force under the Fourth
3 Amendment, or (5) retaliation in violation of the First
4 Amendment, your verdict should be for Plaintiff. If, on the
5 other hand, Plaintiff has failed to prove any of these
6 violations, your verdict should be for Defendant.

7 **FOURTH AMENDMENT RIGHTS - UNREASONABLE DETENTION**

8 As previously explained, Plaintiff has the burden to
9 prove that the acts of Defendant deprived Plaintiff of
10 particular rights under the United States Constitution. In
11 this case, Plaintiff's first allegation is that Defendant
12 deprived him of his rights under the Fourth Amendment when
13 Defendant entered his house and detained him.

14 Under the Fourth Amendment, a person has the right to be
15 free from an unreasonable detention. In order to prove that
16 Defendant deprived him of his Fourth Amendment right,
17 Plaintiff must prove the following elements by a
18 preponderance of the evidence:

- 19 1. Defendant detained Plaintiff;
- 20 2. In detaining Plaintiff, Defendant acted
21 intentionally; and
- 22 3. The detention was unreasonable.

23 A defendant law enforcement officer detains a person
24 when he restrains the person's liberty by physical force or a
25 show of authority. A person's liberty is restrained when,
26 under all of the circumstances, a reasonable person would not
27 have felt free to ignore the presence of law enforcement
28 officers and go about his business.

1 In determining whether a reasonable person in
2 Plaintiff's position would have felt free to leave, consider
3 all of the circumstances, including

- 4 1. The number of officers present;
- 5 2. Whether weapons were displayed;
- 6 3. Whether the encounter occurred in a public or
7 nonpublic setting;
- 8 4. Whether the officer's manner would imply that
9 compliance would be compelled; and
- 10 5. Whether the officers advised the person that he was
11 free to leave.

12 The detention in this case is reasonable if, under all
13 of the circumstances known to Defendant at the time, he had a
14 reasonable suspicion that Plaintiff was engaged in criminal
15 activity, and the length and scope of the detention was
16 reasonable. Reasonable suspicion is an objectively
17 reasonable belief based on specific and articulable facts
18 that the particular person detained is engaged in criminal
19 activity. To determine whether the length and scope of the
20 detention was reasonable, consider how Defendant restricted
21 Plaintiff's liberty and Defendant's reason for using such a
22 method and the length of time.

23 A person acts "intentionally" when the person acts with
24 a conscious objective to engage in particular conduct. Thus,
25 Plaintiff must prove that Defendant meant to engage in the
26 acts that caused a detention of Plaintiff's person. Although
27 Plaintiff does not need to prove Defendant intended to
28 violate Plaintiff's Fourth Amendment rights, it is not enough

1 if Plaintiff only proves that Defendant acted negligently,
2 accidentally or inadvertently.

3 **FOURTH AMENDMENT RIGHTS - UNREASONABLE SEARCH**

4 In this case, Plaintiff's second allegation is that
5 Defendant deprived him of his rights under the Fourth
6 Amendment to the Constitution when Defendant searched his
7 house.

8 Under the Fourth Amendment, a person has the right to be
9 free from an unreasonable search of his residence. In order
10 to prove Defendant deprived Plaintiff of this Fourth
11 Amendment right, Plaintiff must prove the following
12 additional elements by a preponderance of the evidence:

- 13 1. Defendant searched Plaintiff's residence;
- 14 2. In conducting the search, Defendant acted
15 intentionally; and
- 16 3. The search was unreasonable.

17 A person acts "intentionally" when the person acts with a
18 conscious goal to engage in a particular act. Thus,
19 Plaintiff must prove that Defendant meant to search
20 Plaintiff's residence. Although Plaintiff does not need to
21 prove Defendant intended to violate Plaintiff's Fourth
22 Amendment rights, it is not enough if Plaintiff only proves
23 Defendant acted negligently, accidentally or inadvertently in
24 conducting the search.

25 **LAWFULNESS OF PROBATION SEARCHES**

26 In this case, Defendant denies that he searched the home
27 of Ivan Arias, but he alleges that the officers who did
28 search it did so because they believed that Jaime Arias, Ivan

1 Arias' cousin, was residing there. The parties agree that a
2 term of Jaime Arias' court-ordered probation authorized law
3 enforcement agents to search his residence at any time
4 without any showing of probable cause. When a person is on
5 probation, the law permits a peace officer to search that
6 person's residence, without a warrant and without suspicion
7 of criminal conduct, so long as a court has imposed a
8 condition of probation on that person allowing such a search.

9 Law enforcement, however, must have probable cause to
10 believe the probationer actually lives at the residence
11 searched. Therefore, Plaintiff must prove that Defendant
12 searched Ivan Arias' residence, and Plaintiff must also prove
13 that Defendant did not have probable cause to believe that
14 Jaime Arias lived at the 435 Link Lane residence. If
15 Plaintiff proves that Defendant lacked probable cause to
16 believe that Jaime Arias lived at the 435 Link Lane address,
17 then Defendant's search of the home was unreasonable under
18 the Fourth Amendment. The facts known to the officers at the
19 time of the search must have been sufficient to support a
20 belief in a person of reasonable caution that Jaime Arias
21 lived at 435 Link Lane.

22 To determine whether Defendant had probable cause, you
23 must examine the "totality of the circumstances" in a common
24 sense manner.

25 **FOURTH AMENDMENT RIGHTS - PROBABLE CAUSE TO ARREST**

26 Plaintiff's third allegation is that Defendant deprived
27 him of his rights under the Fourth Amendment by arresting him
28 without probable cause.

1 Under the Fourth Amendment, the arrest of a person
2 without a warrant is reasonable if the arresting officer had
3 probable cause to believe the person was committing a crime
4 in the presence of the officer. In order to prove the arrest
5 in this case was unreasonable, Plaintiff must prove by a
6 preponderance of the evidence that he was arrested without
7 probable cause.

8 "Probable cause" exists when, under all of the
9 circumstances known to the officer at the time, an
10 objectively reasonable officer would conclude there is a fair
11 probability that Plaintiff was committing a crime.

12 **DEFINITION OF RESISTING DELAYING, OR OBSTRUCTING A**
13 **PEACE OFFICER**

14 In this case Defendant arrested Plaintiff for willfully
15 resisting, delaying, or obstructing a peace officer in the
16 discharge or attempted discharge of the officer's duty. Under
17 the California Penal Code such conduct is a crime.

18 The definition of this offense is that (1) the suspect
19 willfully resisted, delayed, or obstructed a peace officer;
20 (2) when the officer was engaged in the performance of his
21 duties; and (3) the suspect knew or reasonably should have
22 known that the other person was a peace officer engaged in
23 the performance of his duties.

24 A person willfully resists, delays, or obstructs a peace
25 officer in the performance of his duties by (among other
26 things) physically resisting, hiding, or running away from
27 the officer; ignoring or disobeying the officer's verbal
28

1 commands; or interfering with the officer's efforts to conduct
2 a lawful search or perform an investigation.

3 **FOURTH AMENDMENT RIGHTS- EXCESSIVE FORCE**

4 Plaintiff's fourth allegation is that Defendant deprived
5 him of his rights under the Fourth Amendment when Defendant
6 used excessive force against him.

7 In general, an arrest of a person is unreasonable under
8 the Fourth Amendment if a police officer uses excessive force
9 in making a lawful arrest. Thus, in order to prove an
10 unreasonable arrest in this case, Plaintiff must prove by a
11 preponderance of the evidence that Defendant used excessive
12 force when he arrested Plaintiff.

13 Under the Fourth Amendment, a police officer may only
14 use such force as is "objectively reasonable" under all the
15 circumstances. In other words, you must judge the
16 reasonableness of a particular use of force from the
17 perspective of a reasonable officer on the scene and not with
18 the 20/20 vision of hindsight.

19 In determining whether Defendant used excessive force in
20 this case, consider all of the circumstances known to
21 Defendant on the scene, including:

22 1. The severity of the crime or other circumstances to
23 which Defendant was responding;

24 2. Whether Plaintiff posed an immediate threat to
25 Defendant's safety or to others' safety;

26 3. Whether Plaintiff was actively resisting arrest or
27 attempting to evade arrest by flight;
28

1 4. The amount of time and any changing circumstances
2 during which Defendant had to determine the type and amount
3 of force that appeared to be necessary;

4 5. The type and amount of force used.

5 **FIRST AMENDMENT RIGHTS - RETALIATION FOR EXERCISE OF FREE**
6 **SPEECH OR EXPRESSION**

7 Plaintiff's fifth allegation is that Defendant deprived
8 him of his rights under the First Amendment of the
9 Constitution by arresting Plaintiff in retaliation for his
10 exercise of free speech and expression. Under the First
11 Amendment, Plaintiff had the right to free expression and
12 speech. In order to prove that Defendant violated his First
13 Amendment right, Plaintiff must prove the following elements
14 by a preponderance of the evidence:

15 1. Plaintiff engaged in speech or expression protected
16 under the First Amendment;

17 2. Defendant took action against Plaintiff; and

18 3. Plaintiff's protected speech and expression, or the
19 chilling of Plaintiff's protected speech and expression, were
20 a substantial or motivating factor for Defendant's action.

21 A substantial or motivating factor is a significant
22 factor.

23 **CAUSATION**

24 In order to establish that the acts of Defendant
25 deprived Plaintiff of his rights under the United States
26 Constitution as explained in these instructions, Plaintiff
27 must prove by a preponderance of the evidence that the acts
28 were so closely related to the deprivation of Plaintiff's

1 rights as to be the moving force that caused the ultimate
2 injury.

3 **NEGLIGENCE AND RECKLESSNESS INSUFFICIENT FOR LIABILITY**

4 A police officer's failure to exercise due care in the
5 exercise of his duties is not sufficient to constitute a
6 violation of Constitutional rights. If you find that
7 Plaintiff suffered an injury due to negligence by Defendant,
8 therefore, such negligence does not constitute a
9 Constitutional violation. Even recklessness does not violate
10 the Constitution. Therefore, if you find that Defendant
11 acted negligently or recklessly, that does not constitute a
12 violation of Plaintiff's constitutional rights.

13 **COMPENSATORY DAMAGES**

14 It is the duty of the Court to instruct you about the
15 measure of damages. By instructing you on damages, the Court
16 does not mean to suggest for which party your verdict should
17 be rendered.

18 If you return a verdict for Plaintiff, then you must
19 award him such sum of money as you believe will fairly and
20 justly compensate him for any injury you believe he actually
21 sustained as a direct consequence of Defendant's conduct.
22 Damages means the amount of money that will reasonably and
23 fairly compensate Plaintiff for any injury you find was
24 caused by Defendant.

25 You may award actual damages only for those injuries
26 which you find that Plaintiff has proven by a preponderance
27 of the evidence. Moreover, you may award actual damages only
28 for those injuries which you find Plaintiff has proven by

1 preponderance of the evidence to have been the direct result
2 of Defendant's conduct that violated Plaintiff's rights. That
3 is, you may not simply award actual damages for any injury
4 suffered by Plaintiff -- you may award actual damages only
5 for those injuries that are a direct result of actions by
6 Defendant and that are a direct result of conduct by
7 Defendant which violated Plaintiff's rights.

8 Actual damages must not be based on speculation or
9 sympathy. They must be based on the evidence presented at
10 trial, and only on that evidence. It is for you to determine
11 what damages, if any, have been proved.

12 **MEASURES OF TYPES OF DAMAGES**

13 In determining the measure of damages, you should
14 consider the nature and extent of Plaintiff's injuries:

15 The mental, physical, emotional pain and suffering
16 experienced and which with reasonable probability will be
17 experienced in the future; and the reasonable value of
18 necessary medical care, treatment, and services received to
19 the present time.

20 **NOMINAL DAMAGES**

21 The law which applies to this case authorizes an award
22 of nominal damages. If you find for Plaintiff but you find
23 that Plaintiff has failed to prove damages as defined in
24 these instructions, you must award nominal damages. Nominal
25 damages may not exceed one dollar.

26 **CONDUCT OF THE JURY**

27 I will now say a few words about your conduct as jurors.
28

1 First, keep an open mind throughout the trial, and do
2 not decide what the verdict should be until you and your
3 fellow jurors have completed your deliberations at the end of
4 the case.

5 Second, because you must decide this case based only on
6 the evidence received in the case and on my instructions as
7 to the law that applies, you must not be exposed to any other
8 information about the case or to the issues it involves
9 during the course of your jury duty. Thus, until the end of
10 the case or unless I tell you otherwise:

11 Do not communicate with anyone and do not let anyone
12 else communicate with you in any way about the merits of the
13 case or anything to do with it. This includes discussing the
14 case in person, in writing, by phone or electronic means, on
15 Facebook, via e-mail, text messaging, or any Internet chat
16 room, blog, Web site or other feature. This applies to
17 communicating with your fellow jurors until I give you the
18 case for deliberation, and it applies to communicating with
19 everyone else including your family members, your employer,
20 and the people involved in the trial, although you may notify
21 your family and your employer that you have been seated as a
22 juror in this case. But, if you are asked or approached in
23 any way about your jury service or anything about this case,
24 you must respond that you have been ordered not to discuss
25 the matter and to report the contact to the court.

26 Because you will receive all the evidence and legal
27 instruction you properly may consider to return a verdict: do
28 not read, watch, or listen to any news or media accounts or

1 commentary about the case or anything to do with it; do not
2 do any research, such as consulting dictionaries, searching
3 the Internet or using other reference materials; and do not
4 make any investigation or in any other way try to learn about
5 the case on your own.

6 The law requires these restrictions to ensure the
7 parties have a fair trial based on the same evidence that
8 each party has had an opportunity to address. A juror who
9 violates these restrictions jeopardizes the fairness of these
10 proceedings, and a mistrial could result that would require
11 the entire trial process to start over. If any juror is
12 exposed to any outside information please notify the court
13 immediately.

14
15
16
17
18 Dated: 10/24/2010



CLAUDIA WILKEN
United States District Judge